

OPERATING AGREEMENT

**FOR MANAGMENT OF THE
WATER POLLUTION CONTROL LOAN PROGRAM**

BETWEEN

**THE STATE OF IDAHO
DEPARTMENT OF ENVIRONMENAL QUALITY**

AND

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION X**

December 1, 2003

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1. **PURPOSE**

This Agreement establishes a contractual relationship between the U.S. Environmental Protection Agency (EPA) and State of Idaho, Department of Environmental Quality (DEQ) and supercedes the original agreement signed on August 24, 1989.

The purpose of this Agreement is to define and integrate rules, regulations, guidelines, policies, procedures and activities to be followed by EPA and DEQ in administering Idaho's water pollution control revolving loan fund, prescribed by Title VI of the Clean Water Act as amended by the Water Quality Act of 1987, Public Law 100-4. DEQ will use the Water Pollution Control Loan Account to administer the loan fund. This Agreement will continue from year-to-year and will be incorporated by reference into the annual capitalization grant agreement between the EPA and the DEQ. DEQ will use a fiscal year of July 1 to June 30 for reporting purposes.

DEQ and EPA agree to implement modifications to this Agreement required by Congress, legal ruling or EPA regulations. Any program requirements, which necessitate modification of this Agreement, will be negotiated and implemented on a schedule agreed to by DEQ and EPA.

2. **OBJECTIVE OF THE IDAHO REVOLVING LOAN PROGRAM**

The primary objective of the Idaho Water Pollution Control Revolving Loan program is to improve Idaho's water quality by providing a continuing source of financing for projects and activities that protect or enhance water quality. This will assist Idaho communities attain and maintain compliance with the Clean Water Act. Low interest loans will be the primary financing mechanism.

3. **IMPLEMENTATION OF THE OPERATING AGREEMENT**

This Agreement becomes effective when it is signed by both the Regional Administrator of the EPA, Region X and the Director of DEQ.

4. **SUMMARY OF THE BASIC PROVISIONS OF THE OPERATING AGREEMENT**

A. The parties to this Agreement are:

The EPA, Region X, and

The Idaho DEQ

B. DEQ, an instrumentality of the State, has responsibility for the total management and conduct of the loan program.

C. Idaho enacted enabling State Revolving Fund legislation in 1987 (Senate Bill 1178) and in 1988 (Senate Bill 1334) to establish the Water Pollution Control Loan Account. The revised Idaho Code is Attachment 1.

D. DEQ has adopted rules for the operation of the Loan Account (Attachment 2).

E. DEQ has prepared operating procedures to implement an Environmental Review Process (Attachment 5).

- F. DEQ certifies that it has the authority and legal, managerial, technical and operational capability to meet the requirements necessary for administering the revolving loan program.
- G. EPA is responsible for awarding capitalization grants and for managing those grants.
- H. EPA will provide DEQ with grant payments to the Water Pollution Control Loan Account. Such payments will be made in accordance with a projected schedule submitted by DEQ and negotiated with the U.S. EPA.
- I. EPA is responsible for exercising oversight over the DEQ's administration and implementation of the Idaho Water Pollution Control Revolving Fund in order to insure that it is meeting the objectives of such funds under the Clean Water Act and insure the Fund's ability to continue assisting eligible projects in perpetuity.

5. **THE ROLE AND RESPONSIBILITIES OF DEQ**

The Director of the Idaho DEQ assures the Regional Administrator for Region X that DEQ will execute its responsibilities under this Operating Agreement in conformance with applicable Federal laws and regulations.

DEQ AGREES TO:

- A. Comply with Idaho Code Title 39 Chapter 36 and other applicable State laws.
- B. Develop an annual Intended Use Plan which will include a priority list of projects for receiving financial assistance. The public will have an opportunity to review and comment on the plan in accordance with the loan program rules.
- C. Maintain staffing to assure projects meet appropriate technical, environmental and financial requirements.
- D. Operate the Revolving Loan program for purposes of its continuation in perpetuity.
- E. Manage the Revolving Loan program in accordance with this Agreement, terms of the grant agreement, the Clean Water Act as amended by the Water Quality Act of 1987, EPA program and grant regulations, guidance issued by the EPA, and Idaho Code, state rules and procedures.
- F. Accept SRF capitalization grant payments from EPA in accordance with a negotiated payment schedule.
- G. Deposit into the Water Pollution Control Loan Account, (WPCLA), funds equaling 20 percent of each grant payment on or before the date on which DEQ receives the capitalization grant payment.
- H. Enter into binding commitments in an amount equal to 120 percent of each grant payment within one year of receipt of the payment. Projected schedules for commitment of funds to specific projects will be provided in DEQ's Intended Use Plan.
- I. Commit funds to new projects and expend and disburse all monies in an expeditious and timely manner.

- J. Ensure that wastewater treatment works, eligible under Section 603(c)(1) of the Act, constructed in whole or in part before Federal Fiscal Year 1995 with funds directly made available by an EPA capitalization grant, will meet the requirements of, or otherwise be treated under, Sections 201(b), (g)(1), (g)(2), (g)(3), (g)(5), (g)(6), (n)(1) and (o); 204(a)(1), (a)(2), (b)(1) and (d)(2); 211; 218; 511(c)(1) and 513 of the Clean Water Act as amended by the Water Quality Act of 1987, Public Law 100-4.
- K. Expend and disburse capitalization grant monies in accordance with State laws and procedures.
- L. Use fiscal controls and accounting procedures in accordance with generally accepted government accounting principles.
- M. Require loan recipients to maintain project accounts in accordance with generally accepted government accounting principles.
- N. Make annual reports to the Regional Administrator of Region X on the use of loan funds and how DEQ has met its goals and objectives defined in the Intended Use Plan. (See Attachment 8)
- O. Credit all repayments, principal and interest on loans, as well as all earnings on the Fund's invested balances, made from the WPCLA back to the WPCLA.
- P. Provide assistance only to projects which are consistent with plans, if any, developed under 205(j), 208, 303(e), 319 or 320 of the Clean Water Act as amended by the Water Quality Act of 1987, Public Law 100-4.
- Q. Comply with applicable federal laws.
- R. Require communities receiving financial assistance from a capitalization grant to comply with applicable federal laws. This requirement will be handled through conditions to the loan agreement. (See Attachment 6)
- S. Apply the environmental review requirements of DEQ's rules and environmental review procedures to all projects receiving assistance from the loan account.
- T. As a part of this environmental review the DEQ hereby agrees to serve as the designated non-Federal Representative pursuant to 50 C.F.R. §402.08 for consultation under the Endangered Species Act, 16 U.S.C. §1531 et. Seq. (ESA). DEQ will conduct informal consultation under the ESA. The DEQ will prepare any required biological assessment under the direction of the EPA. The DEQ may delegate this responsibility to the SRF assistance recipient or may carry it out in cooperation with the SRF assistance recipient. Any ESA matters will be resolved by the DEQ and the EPA in accordance with the requirements of the ESA and any applicable EPA guidance on ESA compliance in the Clean Water State Revolving Fund Program.
- U. Make available for EPA audit or review Department records relating to the loan account.
- V. Require loan account assistance recipients to make their records available, if necessary, for EPA review.

- W. Maintain the WPCLA as a dedicated account or series of accounts.
- X. Require all loan recipients to establish a dedicated source of revenue for repayments.

6. **THE ROLE OF THE EPA**

EPA AGREES TO:

- A. Provide funding by awarding capitalization grants to DEQ upon approval of a completed application.
- B. Provide grant funds to DEQ according to a mutually agreeable payment schedule defined in DEQ's Intended Use Plan.
- C. Provide technical assistance to DEQ and assist in developing and conducting training programs.
- D. Provide advice and consultation as requested by DEQ.
- E. Inform DEQ of noncompliance and the necessary corrective action.
- F. Provide oversight through the Annual Review and Annual Audit Process.
- G. Provide DEQ with permit information relating to individual projects, including discharge limitations.
- H. Carry out other activities and duties as agreed to in this document or specified in law or regulation.

7. **CAPITALIZATION PAYMENTS**

The schedule of payments is based upon DEQ's Intended Use Plan. Once a payment has been made by increasing the amount of funds available for cash draw, EPA will not reduce that amount, unless a situation of noncompliance has developed.

All payments will be made not later than 8 quarters after the award of the capitalization grant agreement or 12 quarters after the date the funds were allotted to DEQ.

8. **CASH DRAWS**

Money will be transferred to the Water Pollution Control Loan Account from the U.S. Department of the Treasury in accordance with the EPA's SRF Electronic Funds Transfer (EFT) system requirements. Cash draws for the WPCLA will be made separately from other cash draws from the combined federal EFT transfers.

9. **DISBURSEMENTS**

DEQ's procedures for disbursement of funds from the Water Pollution Control Loan Account are described in Attachment 7.

10. **STAFFING AND MANAGEMENT**

- A. DEQ will provide the staffing and training necessary to administer the Revolving Loan program.
- B. DEQ will not use more than 4 percent of the capitalization grants received to administer the SRF.
- C. The Legislative Auditor will conduct an annual independent audit of the Water Pollution Control Loan Account and its operations. This audit will follow procedures specified in the General Accounting Office Standards for Audit of Governmental Organizations, Programs and Functions. The audit report will be completed within one year of Idaho's fiscal year and will be sent to the EPA Project Officer for Idaho's capitalization grants.
- D. EPA agrees to notify DEQ within 90 days of the technical adequacy of the audit report and its findings.
- E. DEQ will strive to ensure the long-term health and viability of the fund and will annually assess the financial health of the Water Pollution Control Loan Account by examining fund balances, sources of funds, repayment streams, etc. Procedures will be revised, as needed, to promote the Account's availability.

11. **STATE COORDINATION**

DEQ assures that a coordinated program will be carried out. Attachment 3 contains a chart and narrative demonstrating the relationship of offices involved in the operation of the revolving loan program. Attachment 4 depicts the funding, review and decision making processes associated with the Water Pollution Control Loan Account.

12. **INTENDED USE PLAN**

An annual priority list will be developed according to DEQ's criteria. The list will include all projects expected to receive financial assistance within the next year and may also include projects expected to request assistance within the next two or three years. An update of any changes from the previous year's Intended Use Plan will also be presented.

13. **ANNUAL REPORT**

Annually, DEQ will report the activities of the Revolving Loan program using a format negotiated with EPA. The basis for the Annual Report is outlined in Attachment 8. The report will be sent to the Director, Office of Ecosystems and Communities, of EPA, Region 10 no later than September 30 of each year and will cover the State fiscal year (July 1 through June 30). This report will identify loan recipients, loan amounts, loan terms and project categories. It will further describe how DEQ has met the goals and objectives identified in the Intended Use Plan as well as how the DEQ has used the Revolving Loan program to help the state achieve its high priority water quality goals.

14. **ANNUAL REVIEW**

Annually, DEQ and EPA will negotiate a plan for the annual review. The plan will be written by EPA and will include specific activities, time and place and materials to be made available during the

review.

15. **SANCTIONS AND COMPLIANCE**

In the event that the EPA identifies an instance of noncompliance it agrees to address the noncompliance in accordance with the requirements of Section 605 of the Clean Water Act, as amended by the Water Quality Act of 1987, Public Law 100-4.

16. **CONGRESSIONAL AND PUBLIC INQUIRIES**

Responses to congressional and public inquiries will be made by the State and, as necessary, coordinated with EPA.

17. **RECORDS**

DEQ will receive project documents from assistance recipients. These documents, together with the State's review memorandums and summary checklists, will be filed in an official project file. Project files will be available for review at DEQ's office. DEQ will retain project files in accordance with 40 CFR Part 30 and Part 31 (as appropriate) and the Idaho Public Records Law, Idaho Code § 9-337 to 9-350.

The Department will allow any person to review its records related to the Revolving Loan program consistent with the Idaho Public Records Law, Idaho Code § 9-337 to 9-350.

EPA will allow any person to review its records in conformance with the Federal Freedom of Information Act.

18. **PUBLIC PARTICIPATION**

The Department will ensure proper public participation in accordance with the direction provided by the EPA's regulations governing public participation in Clean Water Act Programs, found at 40 C.F.R. Part 25 and the applicable state laws and rules. Special attention will be given to public participation in the development of the project priority list, the Intended Use Plan and, during environmental review processes.

19. **DESIGNATED SIGNATORIES**

The following officials are authorized to effect program changes (items significantly altering the operating Agreement):

For DEQ: The Director, Idaho Department of Environmental Quality

For EPA: The Regional Administrator, United States Environmental Protection Agency,
Region X

Items not altering the Operating Agreement but changing implementation of the Program may be made through the Agreement of:

For DEQ: The Administrator, Division of Water, Idaho Department of Environmental Quality

For EPA: The Manager, Natural Resources Management Unit, Office of Ecosystems and

Items not altering the Operating Agreement but changing implementation of the Program may be made through the Agreement of:

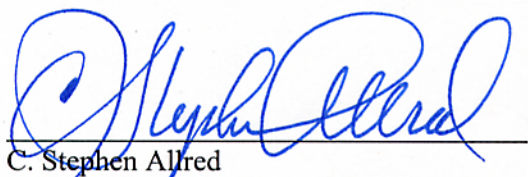
For DEQ: The Administrator, Division of Water, Idaho Department of Environmental Quality

For EPA: The Manager, Natural Resources Management Unit, Office of Ecosystems and Communities, United States Environmental Protection Agency, Region X

This Agreement may be amended any time by mutual agreement. All revisions regarding modifications to any attachment or procedure must be through the designated officials indicated above.

This Agreement will be effective commencing on the

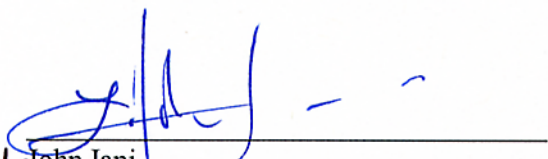
1st day of March, 2004



C. Stephen Allred

Director

Idaho Department of Environmental Quality



L. John Iani

Regional Administrator

United States Environmental Protection Agency, Region X

TITLE 39

HEALTH AND SAFETY

CHAPTER 36

WATER QUALITY

39-3625. DEFINITIONS. (1) “Sewage treatment works” means any facility for the purpose of collecting, treating, neutralizing or stabilizing sewage or industrial wastes of a liquid nature, including treatment by disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishings thereof and their appurtenances.

(2) “Community water system” means a public drinking water system that serves at least fifteen (15) service connections used by year-round residents or serves at least twenty-five (25) year-round residents.

(3) “Nonprofit noncommunity water system” means a public drinking water system that is not a community water system and is governed by section 501 of the Internal Revenue Code and includes, but is not limited to: state agencies, municipalities and nonprofit organizations such as churches and schools.

(4) “Construction” means the erection, building, acquisition, alteration, reconstruction, improvement or extension of sewage treatment works or best management practices, preliminary planning to determine the economic and engineering feasibility of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or best management practices, the engineering, architectural, legal, fiscal and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or best management practices, and the inspection and supervision of the construction of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or best management practices.

(5) “Eligible construction project” means a project for construction of sewage treatment works, community public water systems, nonprofit noncommunity public water systems or for a project for the application of best management practices as set forth in the approved state water quality plan, in related project areas:

(a) For which approval of the Idaho board of environmental quality is required under section 39-118, Idaho Code;

(b) Which is, in the judgment of the Idaho board of environmental quality, eligible for water pollution abatement assistance or for provision of safe drinking water, whether or not federal funds are then available therefor;

(c) Which conforms with applicable rules of the Idaho board of environmental quality;

(d) Which is, in the judgment of the Idaho board of environmental quality, necessary for the accomplishment of the state’s policy of water purity as stated in section 39-3601, Idaho Code; and

(e) Which is needed, in the judgment of the Idaho board of environmental quality, to correct existing water pollution problems or public health hazards and to provide reasonable reserve capacity to prevent future water pollution problems or public health hazards or to provide for safe drinking water.

(6) “Municipality” means any county, city, special service district, nonprofit corporation or other governmental entity having authority to dispose of sewage, industrial wastes, or other wastes,

or to provide for safe drinking water, any Indian tribe or authorized Indian tribal organization, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project.

(7) "Board" means the Idaho board of environmental quality.

(8) "Department" means the Idaho department of environmental quality.

(9) "Director" means the director of the Idaho department of environmental quality.

(10) "Nondomestic wastewater" means wastewater whose source of contamination is not principally human excreta.

(11) "Best management practice" means practices, techniques or measures identified in the state water quality plan which are determined to be the most effective, practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals.

(12) "Nonpoint source pollution" means water pollution that comes from many varied, nonspecific and diffused sources and can be categorized by the general land disturbing activity that causes the pollution.

(13) "Training program" means any course of training established to provide sewage treatment plant operating personnel and public drinking water system personnel with increased knowledge to improve their ability to operate and maintain sewage treatment works and public drinking water systems.

39-3626. AUTHORIZATION OF GRANTS AND LOANS -- DESIGNATION OF ADMINISTERING AGENCY -- RESERVATION OF FUNDS FOR OPERATIONS -- CRITERIA --PRIORITY PROJECTS -- ELIGIBLE PROJECTS. (1) The state of Idaho is hereby authorized to make grants and loans at or below market interest rates, as funds are available, to any municipality to assist said municipality in the construction of sewage treatment works, to community public water systems and nonprofit noncommunity public water systems. The state of Idaho is hereby also authorized to make loans at or below market interest rates for the implementation of a management program established under section 319 of the federal water pollution control act, as amended.

(2) The Idaho board of environmental quality through the department of environmental quality shall be the agency for administration of funds authorized for grants or loans under this chapter, and may reserve up to four percent (4%) of the moneys accruing annually to the water pollution control and wastewater facility loan funds to be appropriated annually for the purpose of operating the water quality programs established pursuant to this chapter. The board may also reserve up to six percent (6%) of the moneys accruing annually to the water pollution control fund to be appropriated annually for the purpose of conducting water quality studies including monitoring.

(3) In allocating state construction grants and loans under this chapter, the Idaho board of environmental quality shall give consideration to water pollution control needs, protection of public health and provision of safe drinking water.

(4) Pursuant to subsection (3) of this section, the Idaho board of environmental quality shall establish an integrated list of priority municipal sewage facility and nonpoint source pollution control projects and a list of priority community and nonprofit noncommunity public water systems.

39-3627. PAYMENTS BY STATE BOARD OF ENVIRONMENTAL QUALITY CONTRACTS WITH MUNICIPALITIES AND COMMUNITY AND NONPROFIT NONCOMMUNITY PUBLIC WATER SYSTEMS -- RULES -- APPROVAL OF ATTORNEY GENERAL -- AUDIT OF PAYMENTS. (1) The Idaho board of environmental quality may make payments not to exceed ninety percent (90%) of the estimated reasonable cost of an eligible

construction project funded by a grant. Payments may be made which are equal to one hundred percent (100%) of the estimated reasonable cost of an eligible construction project funded by a loan.

(2) The Idaho board of environmental quality may, in the name of the state of Idaho, enter into contracts with municipalities and community and nonprofit noncommunity public water systems and any such municipality and community and nonprofit noncommunity public water system may enter into a contract with the Idaho board of environmental quality, concerning eligible construction projects. Any such contract may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following provisions:

(a) An estimate of the reasonable cost of the project as determined by the Idaho board of environmental quality.

(b) An agreement by the municipality or community and nonprofit noncommunity public drinking water system, binding for the actual service life of the sewage treatment works or the actual service life of the community and nonprofit noncommunity public drinking water system:

(i) To proceed expeditiously with, and complete, the project in accordance with plans approved pursuant to section 39-118, Idaho Code.

(ii) To commence operation of the sewage treatment works or community and nonprofit noncommunity public drinking water system on completion of the project, and not to discontinue operation or dispose of the sewage treatment works or community and nonprofit noncommunity public drinking water system without the approval of the board of environmental quality.

(iii) To operate and maintain the sewage treatment works or community and nonprofit noncommunity public drinking water system in accordance with applicable provisions and rules of the board.

(iv) To make available on an equitable basis the services of the sewage treatment works or community and nonprofit noncommunity public drinking water system to the residents and commercial and industrial establishments of areas it was designed to serve.

(v) To provide for the payment of the municipality's share or the community and nonprofit noncommunity public drinking water system's share of the cost of the project when the project is built using grant funds.

(vi) To develop and to secure the approval of the department of plans for the operation and maintenance of the sewage treatment works or community and nonprofit noncommunity public drinking water system; and of plans and programs for the recovery of the capital costs and operating expenses of the works or system.

(vii) To allow the board to make loans of up to one hundred percent (100%) and supplemental grants based upon financial capability to a municipality for the estimated reasonable cost of an eligible project, which may include treatment of nondomestic wastewater.

(viii) To provide for the accumulation of funds through the use of taxing powers, through charges made for services, through revenue bonds, or otherwise, for the purposes of: (1) capital replacement, (2) future improvement, betterment, and extension of such works occasioned by increased wastewater loadings on the works, and (3) establishing a fund dedicated solely to repayment of principal and interest of loans made subsequent to this chapter.

(ix) To commence annual principal and interest payments not later than one (1) year from the date construction is completed and to provide for full amortization of loans not later than twenty (20) years from the date project construction is completed.

(c) The terms under which the Idaho board of environmental quality may unilaterally terminate the contract and/or seek repayment from the municipality or community and nonprofit noncommunity public drinking water system of sums already paid pursuant to the contract for

noncompliance by the municipality with the terms and conditions of the contract and the provisions of this chapter.

(3) The board of environmental quality may, in the name of the state of Idaho, enter into loan contracts with applicants for the implementation of nonpoint source pollution control programs. To be eligible for a loan the project proposed by an applicant must be consistent with the state nonpoint source management plan. Up to five percent (5%) of the total state revolving loan fund may be used for nonpoint source pollution control projects which demonstrate a benefit/nexus to a municipality.

(4) The board may adopt rules necessary for the making and enforcing of contracts hereunder and establishing procedures to be followed in applying for state construction grants or loans or training grants herein authorized as shall be necessary for the effective administration of the grants and loans program.

(5) All contracts entered into pursuant to this section shall be subject to approval by the attorney general as to form. All payments by the state pursuant to such contracts shall be made after audit and upon warrant as provided by law on vouchers approved by the director.

39-3628. WATER POLLUTION CONTROL FUND ESTABLISHED. There is hereby created and established in the state treasury a separate fund to be known as the water pollution control fund. The fund shall have paid into it

1. The moneys provided for in section 63-3638, Idaho Code, that are paid over to the state treasurer shall be deposited to the credit of the water pollution control fund, and not to the credit of the state general fund;
2. All donations and grants from any source which may be used for the provisions of this act;
3. Any other funds which may hereafter be provided by law.

39-3629. WASTEWATER FACILITY LOAN ACCOUNT ESTABLISHED. There is hereby created and established in the agency asset fund in the state treasury an account to be known as the wastewater facility loan account. Surplus moneys in the wastewater facility loan account shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury under section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the wastewater facility loan account. The account shall have paid into it

1. Federal funds which are received by the state to provide for wastewater facility loans together with required state matching funds coming from a portion of the moneys in the water pollution control account as established in section 39-3628, Idaho Code;
2. All donations and grants from any source which may be used for the provisions of this section;
3. All principal and interest repayments of loans made pursuant to this chapter; and
4. Any other moneys which may hereafter be provided by law.

39-3630. APPROPRIATION OF WATER POLLUTION CONTROL FUND -- PURPOSE OF CHAPTER. Moneys in the water pollution control fund are hereby perpetually appropriated for the following purposes

- (1) To provide revenue for the payment of general obligation bonds issued pursuant to section 39-3633, Idaho Code, and general obligation refunding bonds issued pursuant to chapter 115, 1973 laws of the state of Idaho.
- (2) To provide payments for contracts entered into pursuant to this chapter.
- (3) To provide funds to capitalize the wastewater facility loan account established in section

39-3629, Idaho Code, including the required matching share of federal capitalization funds.

(4) To provide funds to capitalize the drinking water loan account established in section 39-7602, Idaho Code, including the required matching share of federal capitalization funds.

(5) Pending such expenditure or use, surplus moneys in the water pollution control fund shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury by section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the water pollution control fund.

39-3631. APPROPRIATION OF WASTEWATER FACILITY LOAN FUND -- PURPOSE OF CHAPTER. Moneys in the wastewater facility loan fund are hereby perpetually appropriated for the following purposes:

(1) To provide loans and other forms of financial assistance authorized under title VI of the federal water quality act of 1987, P.L. 100-4, to any municipality for construction of sewage treatment works.

(2) To provide funds, subject to annual federal and state appropriation and applicable federal limitations, for operation of the wastewater facility loan program by the department of environmental quality.

39-3632. GRANTS AND LOANS FOR DESIGN, PLANNING OR CONSTRUCTION -- LIMITS ON AMOUNT OF GRANTS AND LOANS. (1) The board of environmental quality may divide financial assistance for eligible construction projects into separate grants, loans or a combination of grants and loans for the design, planning, and construction stages of project development. The making of a grant or loan for early stages of a project does not obligate the state to make a grant or loans for later stages of the same project.

(2) The board may make grants from the water pollution control fund; provided, that the projected payments for such grants would not cause the projected balance in the fund to fall below zero at any time. All grant payments shall be subject to the availability of moneys in the fund.

(3) The board may make loans from the wastewater facility loan fund, provided that the projected payments for such loans would not cause the projected balance in the fund to fall below zero at any time. All loan payments shall be subject to the availability of moneys in the fund.

The Idaho Code is the property of the state of Idaho, and is copyrighted by Idaho law, I. C. § 9-350. According to Idaho law, any person who reproduces or distributes the Idaho Code for commercial purposes in violation of the provisions of this statute shall be deemed to be an infringer of the state of Idaho's copyright.

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**IDAPA 58
TITLE 01
CHAPTER 12**

58.01. RULES FOR ADMINISTRATION OF WATER POLLUTION CONTROL LOANS

000. LEGAL AUTHORITY.

The Idaho Board of Environmental Quality, pursuant to authority granted in Chapters and 36, Title 39, Idaho Code, did adopt the following rules for the administration of a Water Pollution Control Loan Program in Idaho. (5-3-03)

001. TITLE AND SCOPE.

01. Title. These rules will be known and cited as Idaho Department of Environmental Quality Rules, IDAPA 58.01.12, "Rules for Administration of Water Pollution Control Loans". (3-30-01)

02. Scope. The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering a state loan program for providing financial assistance to eligible applicants for the construction of water pollution control projects. (3-30-01)

002. WRITTEN INTERPRETATIONS.

As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706. (5-3-03)

003. POLICY.

It is the policy of the Idaho Board of Environmental Quality through the Idaho Department of Environmental Quality, to administer the Water Pollution Control Loan Program for the purpose of protecting and enhancing the quality and value of the water resources of the state of Idaho by financially assisting in the prevention, control and abatement of water pollution. It is also the intent of the Board of Environmental Quality to assign a priority rating to those projects which will most significantly improve the quality of the waters of the state and most adequately protect the public health. (3-30-01)

004. INCORPORATION BY REFERENCE.

These rules do not contain documents incorporated by reference. (3-30-01)

005. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (12-31-91)

01. Best Management Practice. A practice or combination of practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be the most cost-effective and practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality needs. (3-30-01)

02. Board. The Idaho State Board of Environmental Quality. (12-31-91)

03. Categorical Exclusion (CE). Category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. (5-3-03)

04. Collector Sewer. That portion of the wastewater treatment facility whose primary purpose is to receive sewage from individual residences and other individual public or private structures and which is intended to convey wastewater to an interceptor sewer or a treatment plant. (1-1-89)

05. Construction. The erection, building, acquisition, alteration, reconstruction, improvement or extension of wastewater treatment facilities, including preliminary planning to determine the economic and engineering feasibility of wastewater treatment facilities, the engineering, architectural, legal, fiscal and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures and other action necessary in the construction of

wastewater treatment facilities; the inspection and supervision of the construction; and for projects funded with federal moneys the costs incurred during the one (1) year project certification period. (1-1-89)

06. Department. The Idaho Department of Environmental Quality. (1-1-89)

07. Director. The Director of the Idaho Department of Environmental Quality or his/her designee. (5-3-03)

08. Eligible Applicant. A municipality or nonpoint source project sponsor which has the ability to establish and maintain a loan repayment source. Individuals and for-profit corporations are not eligible. 3-30-01)

09. Eligible Costs. Costs which are necessary for planning, designing and/or constructing wastewater treatment facilities or implementation of water pollution control projects. To be eligible, costs must be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 041. (5-3-03)

10. Environmental Information Document (EID). Any written environmental assessment prepared by an applicant or consultant describing the environmental impacts of a proposed wastewater construction project This document will be of sufficient scope to enable the Department to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted. (5-3-03)

11. Environmental Impact Statement (EIS). A document prepared by the grantee in accordance with Environmental Review Procedures contained in Chapter 5 of the Handbook when the Department determines that the proposed construction project will significantly affect the environment as described in Appendix C of the Handbook. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these impacts can be either avoided or mitigated. (5-3-03)

12. Facility Plan. Systematic evaluation by a professional engineer of feasible treatment alternatives considering demographic, topographic, hydrologic and institutional characteristics of a project area to demonstrate that the scheduled alternative is cost effective. (3-5-03)

13. Financial Management System. Uniform method of recording, summarizing and analyzing financial information about the water pollution control loan applicant. (3.30-01)

14. Finding Of No Significant Impact (FNSI). A document prepared by the Department briefly presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement (EIS) will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it. (5-3-03)

15. Handbook. "Wastewater Facilities Loan Account Handbook of Procedures." (5-3-03)

16. Implementation Plan. Completed project implementation plan or work plan provides detailed documentation of the proposed project including list of tasks, schedule of tasks, agency/contractor/entity responsible for implementation of the project tasks, adequate time schedules for completion of all budget tasks, and the anticipated results of the project. (3-30-01)

17. Ineligible Costs. Costs which are described in Section 041.05. (5-3-03)

18. Interceptor Sewer. That portion of the wastewater treatment facility whose primary purpose is to transport domestic sewage or nondomestic wastewater from collector sewers to a treatment plant. (1-1-89)

19. Municipality. Any county, city, special service district, nonprofit corporation or other governmental entity having authority to dispose of sewage, industrial wastes, or other wastes, or to provide for safe drinking water, any Indian tribe or authorized Indian tribal organization, or any combination of two (2) or more of the on going acting jointly, in connection with an eligible project. 3-30-01)

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20. **National Pollutant Discharge Elimination System. Point source** permitting program established pursuant to Section 402 of the federal Clean Water Act (33 U.S.C. Section 1342). (3-30-01)
21. **Nondomestic Wastewater.** Wastewaters originating primarily from industrial or commercial processes carry which carry little or no pollutants of human origin. (5-3-03)
22. **Nonpoint Source Pollution.** Water pollution that comes from varied, nonspecific, and diffuse sources and can be associated with the general land disturbing activity that causes the pollution. (3-30-01)
23. **Nonpoint Source Project Sponsor.** Any county, city, special service district, nonprofit corporation, or other governmental entity, or a combination thereof. (3-30-01)
24. **0 & M Manual.** For wastewater treatment facilities, a guidance and training manual outlining the optimum operation and maintenance of the wastewater treatment facility or its components. For nonpoint source water pollution control projects, a plan that incorporates applicable sections of the Natural Resources Conservation Service Field Office Technical Guide, for implementation of best management practices. (3-30-01)
25. **Plan Of Operation.** A schedule of specific actions and completion dates for construction, start-up and operation of the wastewater treatment facility or for implementation of water pollution control projects. (5-3-03)
26. **Point Source.** Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. (3-30-01)
27. **Pollutant.** Any chemical, biological, or physical substance whether it be solid, liquid, gas, or a quality thereof, which if released into the environment can, by itself or in combination with other substances, create a nuisance or render that environment harmful, detrimental, or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other beneficial uses. (1-1-89)
28. **Priority List.** An integrated list of proposed wastewater treatment facility and nonpoint source pollution control projects rated as described in Section 020. (5.3-03)
29. **Rehabilitation.** The repair or replacement of limited segments of interceptor or collector sewers. (5-3-03)
30. **Reserve Capacity.** That portion of the treatment works that is designed and incorporated in the constructed facilities to handle future sewage flows and loadings. (1-1-89)
31. **Sewer Use Ordinance.** An ordinance adopted pursuant to Title 42, Chapter 32, Idaho Code, or other applicable law which requires new sewers and connections to be properly designed and constructed, prohibits extraneous sources of inflow and prohibits introduction of wastes into the sewer in an amount that endangers the public safety or the physical or operational integrity of the wastewater treatment facility. (1-1-89)
32. **State.** The state of Idaho (12-31-91)
33. **Supplemental Grants.** A grant awarded to a municipality in conjunction with a loan from the water pollution control loan account. (3-30-01)
34. **Suspension.** An action by the Director to suspend a loan contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (1.1-89)
35. **Unified Watershed Assessment.** Federal watershed assessment that encompasses the State list of impaired waters. (3-30-01)

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36. Termination. An action by the Director to permanently terminate a loan contract prior to project completion for a specific cause. Terminated contracts will not be reinstated. (1-1-89)

37. User Charge System. A system of rates and service charges applicable to specific types of users, including any legal enforcement mechanism as may be required and which provides sufficient reserves and/or revenues for debt retirement, operation and maintenance, and replacement of the installed equipment or structure. (3-30-01)

38. Wastewater. A combination of the liquid and water-carried wastes from dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any groundwater, surface water and storm water that may be present; liquid and water that is physically, chemically, biologically, or rationally identifiable as containing excreta, urine, pollutants or domestic or commercial wastes; sewage. (1-1-89)

39. Wastewater Treatment Facility. Any facility, including land, equipment, furnishings and appurtenances thereof, used for the purpose of collecting, treating, neutralizing or stabilizing wastewater and removing pollutants from wastewater including the treatment plant, collectors, interceptors, outfall and outlet sewers, pumping stations, sludge treatment and handling systems, land disposal systems; a sewage treatment plant. (1-1-89)

40. Water Pollution Control Project. Any project that contributes to the removal, curtailment, or mitigation of pollution of the surface waters or groundwater of the state, or the restoration of the quality of said waters, and conforms to any applicable planning document which has been approved and/or adopted such as the State Water Quality Management Plan. This includes the planning, design, construction/implementation or any other distinct stage or phase of a project. (3-30-01)

006. -- 009. (RESERVED).

010. FINANCIAL AND MANAGEMENT CAPABILITY ANALYSIS.

No loans shall be awarded for projects unless the applicant has demonstrated and certified that it has the legal, technical, managerial, and financial capabilities as provided for in these rules to ensure construction, operation and maintenance, and to repay principal and interest which would be due on a loan. (5-3-03)

01. Information Needed. Before an application will be considered complete, the applicant must submit all necessary information on a form prescribed by the Department along with an analysis of that information. The information shall include, but not be limited to, demographic information of the applicant, estimated construction or implementation costs, annual operating costs, and information regarding the financing of the project, including the legal debt limit of the applicant and the existence and amount of any outstanding bonds or other indebtedness which may affect the project; and (3-30-01)

02. Incorporated Nonprofit Applicants. (7-1-93)

a. In addition to all other information required to be submitted by these rules, an incorporated nonprofit applicant must demonstrate to the satisfaction of the Department by its articles of incorporation and/or bylaws, that: (3-30-01)

i. The corporation is nonprofit and lawfully incorporated pursuant to Chapter 3, Title 30, Idaho Code; and (1-1-89)

ii. The corporation is authorized to incur indebtedness to construct, improve or repair wastewater treatment facilities and/or implement water pollution control projects; and (3-30-01)

iii. The corporation is authorized to secure indebtedness by pledging corporation property, including any revenues raised through a user charge system; and (1-1-89)

iv. The corporation exists either perpetually or for a period long enough to repay a wastewater treatment facility loan or water pollution control project loan; and (3-30-01)

v. The corporation is capable of raising revenues sufficient to repay a loan. (3-30-01)

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b. The Department may impose conditions on the making of a wastewater treatment facility loan or water pollution control project to an incorporated nonprofit applicant which are necessary to carry out the provisions of these rules and the provisions of Chapter 36, Title 39, Idaho Code. (3-30-01)

03. Cost Allocation. An applicant proposing to construct wastewater treatment facilities designed to serve two (2) or more qualifying entities must show how the costs will be allocated among the participating entities. Such applicants must provide an executed intermunicipal service agreement which, at a minimum, incorporates the following information: (1-1-89)

- a. The basis upon which the costs are allocated; and (1-1-89)
- b. The formula by which the costs are allocated; and (1-1-89)
- c. The manner in which the cost allocation system will be implemented. (1-1-89)

04. Waivers. The requirement in Subsection 010.03 may be waived by the Department if the applicant can demonstrate: (12-31-91)

- a. Such an agreement is already in place; or (1-1-89)
- b. There is documentation of a service relationship in the absence of a formal agreement; or (1-1-89)
- c. The entity providing wastewater treatment exhibits sufficient financial strength to continue the project, if one (1) or more of the entities supplying wastewater fails to participate. (1-1-89)

011. -- 019. (RESERVED).

020. INTEGRATED PRIORITY RATING SYSTEM.

Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. Information is also received from the Department and consulting engineers. Limited loan funds are awarded to projects based on priority ratings. Projects are rated by the Department on a standard priority rating form using public health and water quality criteria. (5-3-03)

01. Purpose. An integrated priority rating system shall be utilized by the Department to annually allot available funds to water quality projects determined eligible for funding assistance under the water pollution control loan program in accordance with these rules. (5-3-03)

02. Water Quality Project Ranking. Under the integrated priority rating system, point source and eligible nonpoint source water pollution control projects shall first be primarily ranked based on the following factors: (3-30-01)

- a. Project eliminates an officially declared or designated water-borne public health hazard or public health emergency. (3-30-01)
- b. Project addresses watershed restoration as identified in the Unified Watershed Assessment and Restoration Priorities for Idaho. (3-30-01)
- c. Project addresses watershed protection as identified in the Rules of the Department of Environmental Quality, IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements," or IDAPA 58.01.11, "Ground Water Quality Rule". (3-30-01)
- d. Project addresses preventing watershed degradation. (3-30-01)

03. Department Guidelines. Secondary ranking under each factor in Subsection 020.02 will be established by Department guidelines, which will be approved and advertised each year. The additional ranking will include but not limited to the following: nexus/benefit to the municipality; project water quality effectiveness;

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readiness to proceed; cost effectiveness, etc. (3-30—01)

04. Integrated Priority List. A list shall be developed annually from projects rated according to Subsection 020.02 and 020.03. Such list shall be submitted for public review and comment, and shall thereafter be submitted to the Board for approval. (5-3-03)

a. Priority Reevaluation. Whenever significant changes occur, which in the Department's judgment would affect the design parameters or treatment requirements by either increasing or decreasing the need for or scope of any project, a reevaluation of that priority rating will be conducted. (1-1-89)

b. Priority Target Date. An eligible applicant whose project is on the approved priority list, and for which funding is available, will be contacted by the Department and a target date for submission of a completed loan application will be established. (5-3-03)

c. Project Bypass. A project that does not or will not meet the project target date or a Department schedule that allows for timely utilization of loan funds may be bypassed, substituting in its place the next highest ranking project(s) that is ready to proceed. A project that is bypassed will be notified in writing of the reasons for being bypassed. (3-30-01)

021. SUPPLEMENTAL GRANTS.

In conjunction with loans, the Department may award supplemental grants, not to exceed ninety percent (90%) of total eligible costs, to municipalities in the following manner: (3-30-01)

01. Projects Not Funded By Loans. Planning and design projects may receive grant assistance up to ninety percent (90%) funding of eligible costs not funded by a loan; and (1-1-89)

02. Costs In Excess Of Financial Ability. (3.30-01)

a. Municipalities may receive supplemental grant assistance for eligible costs that exceed the amount a loan recipient is able to pay. In order to qualify for a supplemental grant, a loan recipient must have the following: (2-20-01)

i. A median household income that does not exceed eighty percent (80%) of the statewide nonmetropolitan median household income from the most recent census data. If the applicant's service area is not within the boundaries of a municipality, the applicant may use the census data for the county in which it is located; and (3-30-01)

ii. An annual cost of wastewater service for residential customers which exceeds two percent (2%) of the median household income. The annual cost includes all operating, maintenance, replacement and debt service costs, both for the existing system and for upgrades, being financed with state revolving funds. (3-30-01)

b. If an applicant meets the requirement of Subsections 021.02.i. and 021.02.ii., a supplemental grant may be made for the amount of the project that causes the annual cost of wastewater service to exceed two percent (2%) of the median household income, subject to available funds. (3-30-01)

03. Accrued Interest On Loans With Supplemental Grants. Interest will not be accrued during the design and construction phases on loan projects that also have a supplemental grant. (3-30-01)

022. -- 029. (RESERVED).

030. PROJECT FUNDING,

01. Nonpoint Source Implementation Funding. Eligible nonpoint source water pollution control projects may be funded when all of the following criteria are met: (3-30-01)

a. Consistent with and implements the Idaho Nonpoint Source Management Plan. (3-30-01)

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- b. Data is used to substantiate a nonpoint source pollutant problem or issue exists and is described or directly referenced. (3-30-01)
- c. Completed project implementation plan or work plan. (3-30-01)
- d. Project commitment documentation through demonstrated ability for loan repayment. (3-30-01)
- e. The project includes documentation that the project owner(s), manager(s), or the sponsoring agency will maintain the project for the life of the project (i.e., Maintenance Agreement). (3-30-01)
- f. The project provides adequate tracking and evaluation of the effectiveness of the water quality improvements being funded by either the project owner/manager or the sponsoring agency throughout the life of the project. (3-30-01)
- g. The project demonstrates nexus/benefit to municipality through a letter of support from one (1) or more affected municipalities. (3-30-01)
- 02. Wastewater Treatment Facility Funding.** Projects may be funded in steps: (3-30-01)
 - a. Step 1. Facility plan prepared in accordance with the Handbook. (5-3-03)
 - b. Step 2. Design which includes the preparation of the detailed engineering plans and specifications necessary for the bidding and construction of the project. (1-1-89)
 - c. Step 3. Construction, which includes bidding and actual construction of the project. (1-1-89)
 - d. Step 4. A combination of Step 2 and Step 3. (1-1-89)
 - e. Combination Step Funding. Projects may be funded in any combination of the steps with the approval of the Department. Separate loans may be awarded for Step I or Step 2 projects. If a Step I or Step 2 project proceeds to construction, either the Step 1 or Step 2 loan, or both, may be consolidated with the Step 3 loan. If a project does not proceed to construction, outstanding Step I and Step 2 loans will be amortized and a repayment schedule prepared by the Department. (1-1-89)
 - f. Cost Effective Requirement. Step 2, Step 3 or Step 4 loans will not be awarded until a final cost effective alternative has been selected by the Step I facility plan as approved by the Department. The cost effective alternative may be selected based on the comment received from at least one (1) public hearing attended by affected users within the jurisdiction of the eligible applicant and conducted in accordance with state law. (5-3-03)
 - g. Funding For Reserve Capacity. Funding for reserve capacity of a treatment plant will not exceed a twenty (20) year population growth and funding for reserve capacity of an interceptor will not exceed a forty (40) year population growth as determined by the Department. (1-1-89)

031. LIMITATION OF PRELOAN ENGINEERING REVIEWS.

Preloan engineering documents prepared by consulting engineers will be reviewed by Department staff only when accompanied by a certificate that the consulting engineer carries professional liability insurance in accordance with Subsection 050.05.d. (5-3-03)

032. -- 039. (RESERVED).

040. LOAN APPLICATION AND REVIEW.

01. Submission Of Application. Those eligible systems which received high priority ranking shall be invited to submit an application. The applicant shall submit to the Department, a completed application on a form as prescribed by the Department. (5-3-03)

02. Application Requirements. Applications shall contain the following documentation,

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as applicable: (5-3-03)

a. A lawful resolution passed by the governing body authorizing an elected official or officer of the qualifying entity to execute a loan contract and sign subsequent loan disbursement requests; (5-3-03)

b. Contracts for engineering or other technical services and the description of costs and tasks set forth therein shall be in sufficient detail for the Department to determine whether the costs associated with the tasks are eligible costs pursuant to Section 041. (5-3-03)

c. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (5-3-03)

i. Be procured for design and/or services during construction or previously procured for planning services through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; and (5-3-03)

ii. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; and (5-3-03)

iii. Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (5-3-03)

iv. Be covered by professional liability insurance in accordance with Subsection 050.05.d. of these rules. A certification of liability insurance shall be included in the application; and (5-3-03)

d. A description of other costs, not included in the contracts for engineering or other technical services, for which the applicant seeks funding. The description of the costs and tasks for such costs must be in sufficient detail for the Department to determine whether the costs are eligible costs pursuant to Section 041; and (5-3-03)

e. A demonstration that the obligation to pay the costs for which funding is requested is the result or will be the result of the applicant's compliance with applicable competitive bidding requirements for construction and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2320, 50-341 and 42-3212, Idaho Code. (5-3-03)

f. Step I - Facility Planning. Plan of study describing the work tasks to be performed in the facility plan if required in accordance with Subsection 030.02, a schedule for completion of the work tasks and an estimate of man hours man hours and costs to complete the work tasks. (5-3-03)

g. Step 2-Design, or Step 4-Design and Construction: (1-1-89)

h. Facility plan, including a final environmental document and decision in accordance with Section 042; and (5-3-03)

ii. Financial and management capability analysis as provided in Subsection 010.01; and (12-31-91)

iii. Intermunicipal service agreements between all qualifying entities within the scope of the project, if applicable; and (1-1-89)

i. Step 3- Construction: (1-1-89)

i. Documented evidence of all necessary easements and land acquisition; and (5-3-03)

ii. Biddable plans and specifications of the approved wastewater treatment facility alternative; and (1-1-89)

iii. A plan of operation and project schedule; and (1-1-89)

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- iv. A user charge system, sewer use ordinance and financial management system; and (1-1-89)
 - v. A staffing plan and budget. (1-1-89)
 - j. Step 4 - Design and Construction. Loan applicants must submit all documentation specified in Subsection 040.02.h. prior to advertising for bids on construction contracts. (5-3-03)
 - k. Nonpoint Source Implementation Funding. (5-3-03)
 - i. Information demonstrating that the project is consistent with and implements the Idaho Nonpoint Source Management Plan. (5-3-03)
 - ii. Data that substantiates a nonpoint source pollution problem or issue exists. (5-3-03)
 - iii. A project implementation plan or workplan. (5-3-03)
 - iv. Project commitment documentation that demonstrates the ability for loan repayment. (5-3-03)
 - v. Documentation that the project owner, manager or sponsoring agency will maintain the project for the life of the project. (5-3-03)
 - vi. A demonstration that there will be adequate tracking and evaluation of the effectiveness of the water quality improvements being funded by either the project owner/manager or the sponsoring agency throughout the life of the project. (5-3-03)
 - vii. A description of the nexus/benefit to a municipality and a letter of support from one (1) or more affected municipalities. (5-3-03)
- 03. Determination Of Completeness Of Application.** The Department shall review the application determine whether it includes all of the information required by Subsection 040.02. (5-3-03)
- 04. Notification Of Incompleteness Of Application.** Written notification if an application is incomplete, including an explanation of missing documentation will be sent to the applicant. The applicant may provide the missing documentation. (5-3-03)
- 05. Reapplication For Loan.** The action of disapproving, recalling or terminating a loan in no way precludes or limits the former applicant from reapplying for another loan when the project deficiencies are resolved and project readiness is secured. (1-1-89)
- 041. DETERMINATION OF ELIGIBILITY OF COSTS.**
The Department shall review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding. (5-3-03)
- 01. Eligible Costs.** Eligible costs are those determined by the Department to be: (5-3-03)
- a. Necessary for planning, designing and/or constructing wastewater treatment facilities or implementation of water pollution control projects; (5-3-03)
 - b. Reasonable; and (5-3-03)
 - c. Costs that are not ineligible as described in Subsection 041.05. (5-3-03)
- 02. Necessary Costs.** The Department shall determine whether costs are necessary by comparing the tasks for which the costs will be incurred to the scope of the project as described in the plan of study for facility planning, the facility plan for design and construction of wastewater treatment facilities, the project implementation plan or work plan for nonpoint source projects, and any other relevant information in the application that describes the scope of the project to be funded. (5-30-03)

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03. Reasonable Costs. Costs shall be determined by the Department to be reasonable if the obligation to pay the costs is the result of or will be the result of the applicant's compliance with applicable competitive bidding requirements for construction and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2320, 50-341 and 42-32 12, Idaho Code. (5-3-03)

04. Examples Of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, reasonable and not ineligible costs include: (5-3-03)

a. Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members or a city attorney. (5-3-03)

b. Costs under construction contracts bid and executed in compliance with state public works construction laws; (5-3-03)

c. Professional and consulting services utilizing a lump sum contract, a negotiated hourly rate contract, a time and materials contract, or cost plus a fixed fee contract; (5-3-03)

d. Planning directly related to the water pollution control projects; (5-3-03)

e. Sewer system evaluations; (5-3-03)

f. Financial and management capability analysis; (5-3-03)

g. Preparation of construction drawings, specifications, estimates, and construction contract documents; (5-3-03)

h. Landscaping; (5-3-03)

i. Removal and relocation or replacement of utilities for which the qualifying entity is legally obligated to pay; (5-3-03)

j. Material acquired, consumed, or expended specifically for the project; (5-3-03)

k. A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations; (5-3-03)

l. Preparation of an operation and maintenance manual; (5-3-03)

m. Preparation of a plan of operation; (5-3-03)

n. Start-up services; (5-3-03)

o. Project identification signs; (5-3-03)

p. Public participation for alternative selection; (5-3-03)

q. Development of user charge and financial management systems; (5-3-03)

r. Development of sewer use ordinance; (5-3-03)

s. Staffing plans and budget development; (5-3-03)

t. Certain direct and other costs as determined eligible by the Department; (5-3-03)

u. Costs of assessing and defending contractor claims determined unmeritorious by the Department; (5-3-03)

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v. Costs of complying with the Federal Water Pollution Control Act (P. L. 92-500) as amended, 33 USC Section 1251 et seq., loan requirements applied to specific projects; and (5-3-03)

w. Site acquisition costs, including sewer right of way, sewage treatment plant site, wastewater land application sites and sludge disposal areas. (5-3-03)

05. Ineligible Project Costs. Costs which are ineligible for funding include, but are not limited to: (5-3-03)

a. Basin or area wide planning not directly related to the project; (5-3-03)

b. Bonus payments not legally required for completion of construction before a contractual completion date; (5-3-03)

c. Personal injury compensation or damages arising out of the project; (5-3-03)

d. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (5-3-03)

e. Costs outside the scope of the approved project; (5-3-03)

f. Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, or city attorney; (5-3-03)

g. Construction of privately owned wastewater treatment facilities; (5-3-03)

h. Cost of land in excess of that needed for the proposed project. 5-3-03)

i. Cost of refinancing existing indebtedness. (5-3-03)

j. Reserve funds (5-3-03)

06. Notification Regarding Ineligible Costs. Prior to providing a loan offer, the Department shall notify the applicant if certain costs are not eligible for funding and the reasons for the Department's determination. If such costs are included in the engineering contract, the Department shall also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice. (5-3-03)

07. Eligible Costs And The Loan Offer. The loan offer shall reflect those costs determined by the Department to be eligible costs. The loan offer, however, may include estimates of some eligible costs that have not yet been set, such as construction costs. Actual eligible costs may differ from such estimated costs set forth in the loan offer. In addition, loan disbursements may be increased or decreased if eligible costs are modified as provided in Section 060. (5-3-03)

042. ENVIRONMENTAL REVIEW.

01. Environmental Documentation. For eligible nonpoint source projects funded solely with non-federal funds, see Subsection 042.08. The applicant shall consult with the Department during facility planning to determine the required level of environmental review. The Department will assess the possible environmental impacts associated with the project and will notify the applicant of the type of environmental documentation which will be required. Based upon the Department's determination, the applicant shall: (5-3-03)

a. Submit a request for categorical exclusion with supporting backup documentation as specified by the Department; (1-1-89)

b. Prepare an environmental information document in a format specified by the Department; or (1-1-89)

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- c. Prepare an environmental impact statement in a format specified by the Department. (1-1-89)
- 02. Review Of Request.** If an applicant requests a categorical exclusion, the Department shall review the request and, based upon project documentation submitted by the applicant, shall: (1-1-89)
 - a. Issue notice of categorical exclusion; (1-1-89)
 - b. Notify the applicant of need for preparation of an environmental information document; or (1-1-89)
 - c. Notify the applicant of need for preparation of an environmental impact statement. (1-1-89)
- 03. Environmental Information Document Requirements.** If an environmental information document is required, the Department shall: (1-1-89)
 - a. Conduct an environmental assessment based upon the applicant's environmental information document and issue: (1-1-89)
 - i. A draft finding of no significant impact; or (1-1-89)
 - ii. A notice of need for preparation of an environmental impact statement. (1-1-89)
 - b. Allow a thirty (30) day public comment period, following public notice, for all projects receiving a draft finding of no significant impact. If negative impacts are found during the public process, the Department will reassess the project to determine whether an environmental impact statement will be required. (1-1-89)
 - c. Issue a final finding of no significant impact if no new information is received requiring a reassessment. (1-1-89)
- 04. Environmental Impact Statement Requirements.** If an environmental impact statement is required, the applicant shall: (1-1-89)
 - a. Contact all affected state agencies to determine the required scope of the document; and (1-1-89)
 - b. Prepare and submit a draft environmental impact statement to. all affected agencies for review and comment; and (1-1-89)
 - c. Conduct a public hearing which may be in conjunction with a facility plan hearing; and (1-1-89)
 - d. Prepare and submit a final environmental impact statement incorporating all agency and public input for Departmental review and approval. (1-1-89)
- 05. Approval Of Requirements.** Upon completion by the applicant and approval by the Department of all requirements listed in Subsection 042.04.d., the Department will issue a record of decision documenting the mitigative measures which will be required of the applicant. The loan agreement will be conditioned upon such mitigative measures. (5-3-03)
- 06. Federal Environmental Review Use.** If a federal environmental review for the project has been conducted, the Department may, in its discretion, adopt the document of the federal agency and issue its own determination. (1-1-89)
- 07. Validity Of Review.** Environmental reviews are valid for five (5) years. If a loan application is received for a project with an environmental review which is more than five (5) years old, the Department will reevaluate the project, environmental conditions and public views and will: (1-1-89)
 - a. Reaffirm the earlier decision; or (1-1-89)

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b. Require supplemental information to the earlier environmental impact statement, environmental information document, or request for categorical exclusion. Based upon a review of the updated document, the Department will issue and distribute a revised notice of categorical exclusion, finding of no significant impact, or record of decision. (1-1-89)

08. Exemption From Review. Loan projects funded solely with state moneys are exempt from the environmental review process described in this rule. Notice of such exemption will be provided to the loan applicant/recipient by the Department. (5-3-03)

043. -- 049. (RESERVED).

050. LOAN OFFER AND ACCEPTANCE.

01. Loan Offer. Loan offers will be delivered to successful applicants by representatives of the Department or by registered mail. (1-1-89)

02. Acceptance Of Loan Offer. Applicants have sixty (60) days in which to officially accept the loan offer on prescribed forms furnished by the Department. The sixty (60) day acceptance period commences from the date indicated on the loan offer notice. If the applicant does not accept the loan offer within the sixty (60) day period the loan funds may be offered to the next project of priority. (1-1-89)

03. Acceptance Executed As A Contract Agreement. Upon signature by the Director and upon signature by the authorized representative of the eligible applicant, the loan offer shall become a contract. Upon accepting a loan offer a eligible applicant becomes a loan recipient. The disbursement of funds pursuant to a loan contract is subject to a finding by the Director that the loan recipient has complied with all loan contract conditions and has prudently managed the project. The Director may, as a condition of disbursement, require that a loan recipient vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with loan funds. No third party shall acquire any rights against the state or its employees from a loan contract. (5-3-03)

04. Estimate Of Reasonable Cost. All loan contracts will include the eligible costs of the project. Some eligible costs may be estimated and disbursements may be increased or decreased as provided in Section 060. (5-3-30)

05. Terms Of Loan Offers. The loan offer shall contain such terms as are prescribed by the Department including, but not limited to: (1-1-89)

a. Terms consistent with these rules, the project step to be funded under the loan offer, and Title 39, Chapter 36, Idaho Code; and (5-3-03)

b. Special clauses as determined necessary by the Department for the successful investigation, design, construction and management of the project; and (1-1-89)

c. Terms consistent with applicable state and federal laws pertaining to engineering reports, design and construction, including the Public Works Contractors License Act and the Public Contracts Bond Act, Chapter 19, Title 54, Idaho Code, and the federal Clean Water Act requirements for projects funded with loan moneys of federal origin; and (1-1-89)

d. Requirement for the prime engineering firm(s) and their principals retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's professional liability insurance shall be one hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance must cover all such services rendered for all project phases, whether or not such services or phases are state funded, until the certification of project performance is accepted by the Department; and (5-3-03)

e. The project shall be bid, contracted and constructed according to the current edition of Idaho

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Standards for Public Works Construction unless the qualifying entity has approved and adopted acceptable public works construction standards approved by the Department; and (5-3-03)

f. The loan interest rate for loans made during the state fiscal year beginning July 1 will be established by the Director. The interest rate will be a fixed rate in effect for the life of the loan. The rate may equal but shall not exceed the current market rate; and (3.30-01)

g. All loans must be fully amortized within a period not to exceed twenty (20) years after project completion. The loan contract will contain a schedule of loan repayments stating the due dates and the amount due. The borrower may elect for either a schedule of semi-annual or annual repayments at the time the loan is finalized; and (3-30-01)

h. Repayment default will occur when a scheduled loan repayment is thirty (30) days past due. If default occurs, the Department may invoke appropriate loan contract provisions and/or bond covenants. (5-3-03)

051. ACCOUNTING AND AUDITING PROCEDURES.

Municipalities receiving loans must maintain project accounts in accordance with government accounting principles issued by the Government Accounting Standards Board (GASB). Eligible nonpoint source water pollution control implementation funding project sponsors will be audited on an annual basis according to government auditing standards issued by the U.S. General Accounting Office (GAO). (3-30-01)

052., -- 059. (RESERVED).

60. DISBURSEMENTS.

01. Loan Disbursements. Requests to the Department for actual disbursement of loan proceeds will be made by the loan recipient on forms provided by the Department. (3-30-01)

02. Loan Increases. An increase in the loan amount as a result of an increase in eligible project costs will be considered, provided funds are available. Documentation supporting the need for an increase must be submitted to the Department for approval prior to incurring any costs above the eligible cost ceiling. (1-1-89)

03. Loan Decreases. If the actual eligible cost is determined by the Department to be lower than the estimated eligible cost the loan amount will be reduced proportionately. (1-1-89)

04. Project Review To Determine Final Eligible Costs. A project review by the Department or a Department designee will determine the final eligible costs. (3-30-01)

05. Final Disbursement. The final loan disbursement will not be made until final inspection, final review and a final loan repayment schedule have been completed. (3-30-01)

61. LOAN CONSOLIDATION.

If two (2) or more loans are consolidated into one (1) loan, the interest rate for the consolidated loan will be at the same rate as the loan being consolidated with the lowest interest rate. (3-30-01)

062.-- 079. (RESERVED).

080. SUSPENSION OR TERMINATION OF LOAN CONTRACTS.

01. Causes. The Director may suspend or terminate any loan contract prior to final disbursement for failure by the loan recipient or its agents, including engineering firm(s), contractor(s) or subcontractor(s) to perform. A loan contract may be suspended or terminated for good cause including, but not limited to, the following: (5-3-03)

a. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, or receipt of stolen property, or any form of tortious conduct; or (1-1-89)

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b. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years' imprisonment or any crime involving or affecting the project; or (1-1-89)

c. Violation(s) of any term of the loan contract; or (1-1-89)

d. Any willful or serious failure to perform within the scope of the project, plan of operation and project, schedule, terms of engineering subagreements, or contracts for construction; or (5-3-03)

e. Debarment of a contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. (1-1-89)

02. Notice. The Director will notify the loan recipient in writing and by certified mail of the intent to suspend or terminate the loan contract. The notice of intent shall state: (1-1-89)

a. Specific acts or omissions which form the basis for suspension or termination; and (1-1-89)

b. That the loan recipient may be entitled to appeal the suspension or termination pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (3-15-02)

03. Determination. A determination will be made by the Board pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (3-15-02)

04. Reinstatement Of Suspended Loan. Upon written request by the loan recipient with evidence that the causes(s) for suspension no longer exists, the Director may, if funds are available reinstate the loan contract. If a suspended loan contract is not reinstated, the loan will be amortized and a repayment schedule prepared in accordance with provisions of the loan contract. (1-1-89)

05. Reinstatement Of Terminated Loan. No terminated loan shall be reinstated. Terminated loans will be amortized and a repayment schedule prepared in accordance with provisions of the loan contract. (1-1-89)

081. -- 994. (RESERVED).

995. WAIVERS.

Waiver from the requirements of these regulations may be granted by the Department on a case-by-case basis upon full demonstration by the loan applicant /recipient requesting the waiver that the following conditions exist. (1-1-89)

01. Health Hazard. A significant public health hazard exists; or (1-1-89)

02. Groundwater Contamination. A significant groundwater contamination problem exists; or (1-1-89)

03. Pollution. A significant point source of pollution exists causing a violation of Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements", or (1-1-89)

04. Affordability Criteria Exceeded. The project will exceed affordability criteria adopted by the Department in the event the waiver is not granted; or (1-1-89)

05. Availability Of Federal Funds. The waiver will not affect the availability of federal funds for the project where such funding is required by the entity requesting the waiver. (1-1-89)

996. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (5-3-03)

997. INCLUSIVE ENDER.

As used in these rules, the masculine, feminine, or neuter gender, and the singular or plural number, will each be

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deemed to include the others whenever the context so requires.

(1-1-89)

998. CONFIDENTIALITY.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 3, Title 9, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality".

(3-1 5-02)

999. SEVERABILITY.

Idaho Department of Environmental Quality Rules, IDAPA 58.01.12, "Rules for Administration of Water Pollution Control Loans," are severable. If any rule, or part thereof, or the application of such rule to any person or circumstance, is declared invalid, that invalidity does not affect the validity of any remaining portion of the chapter.

(3-30-01)

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ORGANIZATION OF THE SRF

Five state government bodies are involved in the operation of the SRF. The key organization is the Department of Environmental Quality (DEQ).

1. The Idaho DEQ

- A. The DEQ Water Division is responsible for administration, implementation, and coordination of all activities related to the SRF.
- B. The DEQ Management Services Division, Fiscal Office, will maintain all SRF fiscal records.

2. The Attorney General

The Deputy Attorneys General assigned to DEQ will provide legal assistance to the SRF. Their duties will include contract review and legal advice as needed.

3. The State Controller

The State Controller is responsible for processing records relating to the state accounting system.

4. The State Treasurer

The State Treasurer is responsible for investment of idle SRF funds. All interest earned from such investments will be credited to the Water Pollution Control Loan Account. The Treasurer will also keep bonds and other loan securities held by DEQ in a vault until maturity.

5. The Legislature

The Idaho Legislature is responsible for appropriation of state funds. The Legislative Services Office Auditor will provide the annual audit of the SRF.

OPERATION OF THE SRF

The loan process begins when an applicant is placed on the SRF priority list. If a facility plan has not been completed, DEQ staff will explain the requirements for completion of planning, including preparation of an Environmental Information Document (EID).

If a facility plan and EID have been completed and a finding on the EID issued, DEQ staff will conduct a pre-application conference. An application will be provided at this conference.

Upon receipt of a completed application, Project Engineers in the DEQ regional offices will review the application for completeness and accuracy. After review, the application will be forwarded to the Loan Program Manager in the State Office for preparation of a loan offer. Loan offers are reviewed by a Deputy Attorney General prior to signature by the Director or his designee.

DEQ Project Engineers will review plan and specification documents and provide loan recipients with an insert, detailing SRF requirements, for the bid package. The engineers also review bid tabulations and approve awarding of bids.

Loan disbursements will be made as costs are incurred. Disbursement request forms along with corresponding invoices are sent to the Project Engineers for approval. Upon approval the disbursement request are sent to the DEQ Fiscal Office for processing. Cash draws are made in accordance with EPA's electronic funds transfer procedures.

DEQ Project Engineers will provide construction management by attending construction conferences, reviewing construction claims, disputes and change orders. Additionally, to insure that projects are being constructed and managed properly they will conduct interim and final inspections.

Prior to project completion, DEQ Project Engineers will review User Charge Systems and Sewer Use Ordinances as well as Operation and Maintenance Manuals.

The DEQ Fiscal Office will maintain project records for disbursement and loan repayments. Copies of the fiscal records will be maintained along with other project information in files at both the DEQ regional and state offices. Bonds and other collateral for loans will be held in a vault at the State Treasurer's office.

**IDAHO'S RESPONSE TO
EPA'S REQUIRED ELEMENTS
FOR AN APPROVABLE
STATE ENVIRONMENTAL
REVIEW PROGRAM**

In response to the EPA's environmental review process requirement for Title VI projects, DEQ has adopted rules and operating procedures to incorporate into its loan program the requirements of 40 CRF Part 6.

These procedures apply to all "tier I" and "tier II" projects receiving financial assistance from the Water Pollution Control Loan Account. However, non-point source projects funded from the Account will be funded from repayment funds and therefore will not be subject to environmental reviews unless the projects also qualify as "Section 212 projects" pursuant to Section 212 of the Clean Water Act.

According to EPA guidance documents, an approvable state environmental review process must incorporate seven elements. Idaho's response to each of the seven elements follows.

**IDAHO'S RESPONSE TO EPA'S
SEVEN REQUIRED ELEMENTS FOR AN APPROVABLE
STATE ENVIRONMENTAL REVIEW PROGRAM**

In response to the U.S. Environmental Protection Agency's (EPA) state environmental review process requirement for Title VI projects, the State of Idaho has operating procedures to incorporate 40 CFR, Part 6. Also included in the operating procedures is a detailed guidance for the loan recipient in evaluating crosscutting environmental issues. According to EPA guidance documents, an approvable state environmental review process must incorporate seven elements. Idaho's response to each of these elements follows.

ELEMENT 1: LEGAL FOUNDATION

- A. STATE AUTHORITY TO UNDERTAKE ENVIRONMENTAL REVIEWS. Under Section 39-105(4), Idaho Code, we have the required level of authority to perform reviews. Under that section, the Department Director, when designated by the Governor, is authorized to "receive on behalf of the state, and utilize any federal aid . . . made available through the federal government, including the (WQA), for use in or by the State of Idaho in relation to health and environmental protection." The Director has been designated by the Governor to receive and utilize Title VI WQA funds, and he is authorized to perform environmental reviews of projects funded with federal money, since such authority is required to utilize such money.

More specifically, Idaho's Water Pollution Abatement Act designates the Board of the Department of Environmental Quality, through the Director, as the state agency responsible for administration of grants and loans for wastewater treatment projects funded with state and federal WQA money, Idaho Code 39-3603(B) and 39-3~605(B)(l). The Board is authorized to "adopt rules and -regulations . . . necessary for the effective administration of the grant and loan program." Idaho Code 39-3604(D). Since authority to conduct environmental reviews of eligible projects is required to utilize federal funds, these provisions authorize the Board to adopt regulations governing environmental reviews of federal funded projects, and authorize the Director to implement such regulations.

- B. LEAD AGENCY. The Department of Environmental Quality will have primacy in conducting reviews. We will be conducting multidisciplinary reviews with other state and federal agencies. The State Department of Fish and Game and the Idaho Historic Society are examples of the other state agencies that will be involved at the state level. The U.S. Fish and Wildlife Service and Federal Emergency Management Agency (FEMA) are examples of federal agencies that will participate.

- C. DELEGATION. The loan applicant will have the following responsibilities during the environmental review process.

1. Gathering Environmental Information. The loan recipient will be responsible for gathering and submitting environmental information regarding the project and the surrounding planning area for preliminary DEQ review during facility plan development (after completion of the majority of the facility plan has been developed but before selection of a preferred alternative). This information will be used during the loan recipients' consultation with DEQ to determine whether the project is eligible for a categorical exclusion, if it is likely that an EIS will be required or if an environmental assessment will suffice.
2. Preparation of Environmental Information Documents (EID). This will be the responsibility of the loan recipient. The EID will be an integral part of the facility plan.
3. Preparation of the Environmental Impact Statement. This too will be the responsibility of

the loan recipient, although a DEQ approved consultant can be hired to do this task.

4. Public Notices and Hearings. These activities will be handled by the loan recipient.
5. Mitigative Measures. The loan recipient will implement into its project any mitigative measures embodied in a Record of Decision, a Finding of No Significant Impact (FNSI) or the loan agreement.

D. ENVIRONMENTAL REVIEW RESPONSIBILITIES OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY. The Environmental Review responsibilities of the Department include:

1. During early consultation, assess the possible environmental impacts of the project and notify the loan recipient of the type of environmental documentation that will be required.
2. Review and approve or disapprove environmental review documentation submitted by the loan recipient.
3. Document determinations in Categorical Exclusions, Findings of No Significant Impact, Records of Decision, Reaffirmation Notices and public notices.
4. Review and approve EISs submitted by loan applicants.
5. Adopt the environmental documentation of a federal agency, if appropriate.
6. If an environmental determination is more than five years old, reaffirm the previous determination, require supplemental information from the applicant or require the loan recipient to recommence the environmental review process.
7. Ensure the loan recipient abides by any mitigative measures embodied in a Finding of No Significant Impact or Record of Decision by incorporating such measures into the loan agreement. If mitigative measures are not met by the loan recipient, the terms of the loan agreement will have been broken and the Department may nullify the loan.

E. COMPLIANCE FOLLOW-UP. Compliance with mitigative measures will be done through loan conditions. Failure to comply will be met with stop-work orders, payment withholding, grant/loan suspension or termination. All are remedies available to us through our state code.

F. ADMINISTRATIVE PROCEDURES ACT. Regarding remedies “equivalent to” those in the Federal APA, Section 39-107(6) of the Environmental Protection and Health Act, in conjunction with the Idaho Administrative Procedures Act (Idaho Code 67-5201, *et seq.*), provide public remedies substantially similar to the Federal APA. Both the federal and state statutes provide minimum due process rights to any person “aggrieved” by agency action or inaction: an impartial decision-maker, an administrative hearing with prior notice and an opportunity to be heard and judicial review on an administrative record of final agency decisions. Compare Idaho Code 39-107(6), 67-5209, 67-5215 with 5 USC 554 and 702.

ELEMENT 2: INTERDISCIPLINARY APPROACH AND ADHERENCE TO OTHER ENVIRONMENTAL LAWS

A. EXPERTISE. Idaho realizes that responsiveness to a number of federal and state cross-cutting environmental concerns is an integral part of an environmental review process. Interdisciplinary expertise is available through federal and state agencies in Idaho for identifying, evaluating and

interpreting these concerns and for evaluating preferred alternatives which avoid, minimize or mitigate undesirable project impacts.

- B. INTERAGENCY REVIEW AND COORDINATION. Upon issuing a notice of intent to prepare for an Environmental Impact Statement, the loan recipient will contact all potentially affected agencies to initiate the scoping process.

In the event an Environmental Impact Statement is required, the loan recipient must prepare and submit a draft Environmental Impact Statement to all parties identified during the facility planning process, including agencies responding to the scoping process. The loan recipient's final Environmental Impact Statement must address all comments and concerns received from such agencies. The Department will retain oversight of the interagency review process by denying approval of a final Environmental Impact Statement -until the loan recipient has taken such action.

As part of the preparation of an Environmental Information Document or a Request for Categorical Exclusion, the loan recipient must contact all potentially affected agencies. The loan recipient must address all comments and concerns received from such agencies in its Environmental Information Document or Request for Categorical Exclusion. DEQ will send copies of Notices of Categorical Exclusions, Findings of no Significant Impact and Records of Decision to affected state and federal agencies.

Subpart C, 40 CFR, Part 6, identifies the scope of federal environmental concerns and objectives. State and federal expertise in each of these areas is outlined below.

Detailed procedures, to be used by the loan recipient or the IDHW-DEQ in assessing the cross-cutting issues, are provided as an attachment to Chapter 5 of Wastewater Facilities Loan Account Handbook of Procedures.

1. Landmarks, Historical, Cultural and Archeological Sites. The Idaho Historical Society, Historic Preservation Office is responsible for Idaho's participation in the National Register of Historic Places Program established by the National Historic Preservation Act of 1966. The Deputy State Historic Preservation Officer (SHPO) has been responsible in the past for evaluating proposed wastewater construction sites as to historic and archeological importance in accordance with 36 CFR 800. The deputy SHPO will continue to do so. Idaho's historic site review board, comprised of historians, architects, archeologists and geologists, evaluates to approve or reject all potential property nominations for the National Register of Historic Places.
2. Endangered Species. In accordance with the Operating Agreement, the DEQ will carry out any informal consultation required under the ESA as the EPA's designated non-Federal Representative. The DEQ may delegate this responsibility to the SRF assistance recipient. Should a biological assessment be required, the DEQ or the SRF assistance recipient will prepare the required biological assessment under EPA's direction. As required by both the Endangered Species Act and the applicable Fish and Wildlife Service Regulations, the EPA acknowledges that it retains ultimate responsibility for compliance with §7 of the Endangered Species Act.
3. Fish and Wildlife Protection and Enhancement. The protection and management of fish and wildlife species, including those that are threatened and endangered, is primarily the responsibility of the Idaho Fish and Game Department. The activities of the Idaho Fish and Game Department and the U.S. Fish and Wildlife Service overlap to some extent on questions of fish and wildlife. Both agencies will be consulted for each loan project.

4. Wild and Scenic Rivers. Classification, management and protection of wild and scenic rivers is a responsibility shared by numerous agencies in Idaho. The Bureau of Land Management (BLM) and the U.S. Forest Service have direct management and protection responsibilities on sections of several Idaho rivers where they flow through areas under the jurisdiction of either agency. An inventory of Idaho's wild and scenic river sections by EPA Reach is available to the Department through the Northwest Environmental Data Base. This system can be accessed through a terminal in the Department's State Office or from a terminal at the State (Boise) Office of the Idaho Fish and Game Department.
5. Flood Plains. Most Idaho counties and cities participate in the National Flood Insurance Program (refer to attachment list). The Idaho Department of Water Resources (IDWR) is the agency responsible for assisting with local regulations necessary for the flood insurance provided by the National Flood Insurance Act of 1968 under Idaho Code, Title 67, Section 1911 through 1917. Flood Insurance Rate Maps are available to the Department from the State (Boise) Office of the IDWR. Also, for information on maps and general information, the regional office of FEMA can be contacted at Bothell, Washington.

Finally, the Department is bound by Executive Order 86-10 from our Governor to take into account flood hazards in evaluating grant and loan projects (refer to attachment).

6. Farmland Protection. The IDHW-DEQ will consult the U.S. Department of Agriculture to ensure the requirements of the Farmland Protection Act are met. Properties proposed for wastewater construction will be evaluated as needed by field office agronomists at the various USDA Natural Resource Conservation Service offices around the state. This process will be initiated early in the facility planning stage of the project.
7. Wetlands. The U.S. Army Corps of Engineers is the lead agency for the evaluation of proposed projects where encroachment on wetlands is likely. Upon notification by DEQ field staff, the Corp evaluates the impact of possible alterations to wetland areas as a result of wastewater construction. Typically, the U.S. Fish and Wildlife Service and the Idaho Fish and Game Department are consulted in this evaluation. Their expertise regarding threatened and endangered wetland species and/ or possible habitat destruction is an important part of wetland evaluation. One or more site visits usually occur. Mitigation measures to protect wetlands will be incorporated into projects in accordance with the requirements in any Clean Water Act §404 dredge and fill permits issued by the Corps.
8. Ground Water Protection. The EPA Office of Ground Water Unit (Region X) will be conducting reviews of wastewater projects which will be situated over or in close proximity to designated sole source aquifers. In addition, in accordance with an agreement with the State of Idaho, EPA's Groundwater Unit reviews projects over the Snake Plain Aquifer pending that Aquifer designation. This is required under Section 1424(e) of the Safe Drinking Water Act. A copy of the facility plan for a project will be sent to the EPA Groundwater Unit once the state project engineer has initially screened the project through reference to sole source aquifer maps available at all of our field offices.
9. Air Quality. The Idaho Department of Environmental Quality, Air Quality Division, administers an air quality monitoring and control program. The Division evaluates proposed wastewater construction projects to determine compliance with an established state air quality implementation plan (SIP). This plan has been promulgated under Section 51.18 of 40 CFR, Part 51, and is being implemented on EPA projects in accordance with regulations in 40 CFR, Part 6, Subpart C.

ELEMENT 3: DOCUMENTATION OF PRELIMINARY/FINAL ENVIRONMENTAL REVIEW DETERMINATIONS

Decisions resulting from an environmental review will be formally documented and will include information, processes and premises that influenced a determination. Documentation will be maintained to substantiate the lack of, as well as the existence of, potential impacts associated with a proposed project. Determinations that will be formally documented include:

1. Categorical exclusions;
2. Findings of No Significant Impact;
3. Judgment to reaffirm or modify a previously issued categorical exclusion, FNSI or an Environmental Impact Statement following a mandatory five-year environmental reevaluation of a proposed project; and
4. A determination to proceed, or not to proceed, with a project contained in a record of decision following the preparation of a full EIS.

ELEMENT 4: PUBLIC OUTREACH AND PARTICIPATION

Public participation steps must be accomplished before completion of the environmental review process. Loan applicants must conduct a public hearing prior to formal adoption of a facility plan to discuss the proposed facility, the selected alternative, environmental impacts and any needed mitigation measures. Public notice and a 30-day public comment period will be required for all Notices of Intent to prepare an EIS, FNSIs, draft EISs, Records of Decision, Categorical Exclusion determinations or reaffirmations of a decision issued five years earlier. (Refer to Element 1, Part F - Administrative Procedures Act.)

Public notice is defined for the purpose of the environmental review process as publication in a newspaper of community-wide circulation and in a statewide periodical. Public notice will also be made by direct mailing to persons and agencies on the project mailing list.

ELEMENT 5: ALTERNATIVES GENERATION/EVALUATION

As part of the state's procedures for environmental reviews of projects funded through the Clean Water Fund, alternatives generation and evaluation are stressed. A comparative analysis of feasible alternatives, including the no-action alternative, is a required element of an approvable Environmental Information Document and EIS. Each alternative must be evaluated based on beneficial and adverse consequences to the existing environment, the future environment and on individual sensitive environmental issues that have been identified in advance through scoping (for an EIS only). Near-term or long-range measures to avoid, minimize or mitigate adverse impacts will be devised when appropriate. It is further required by the state's environmental review procedures that coordination with other municipal public works projects be considered during the alternatives generation and evaluation stages, including enhancing public recreation and open space opportunities.

An analysis of alternatives must include the following factors:

1. A no-action alternative;
2. Direct and indirect impacts of the complete waste treatment system(s);
3. Existing and future environmental conditions (including all other environmental

objectives) affected by the entire system(s); and

4. Land use and other social parameters affected by the entire system(s).

ELEMENT 6: OTHER ENVIRONMENTAL REVIEW PRINCIPLES

The following additional principles will be incorporated into the environmental review:

1. Purpose and need for facilities must be described based on population projection techniques associated with the Title II program or by a nationally recognized model which is compatible with population projections used in State Implementation Plans developed under the Clean Air Act.
2. Cumulative impacts will be evaluated within the context of complete municipal wastewater treatment system, as well as other public works projects and future community growth (residential, commercial, industrial, etc.), within the study area.

For communities receiving project assistance for the first time, especially when the project is for less than a complete system, the environmental review will be based on impacts resulting from the entire system. An environmental review study area will be delineated in a manner which generally encompasses the complete service area of the final system envisioned to be in place at the planning horizon and outlying areas that may directly or indirectly be impacted by the completed system.

In situations involving improvements to be built as separate projects at different times, the environmental review associated with the first project will consider the anticipated cumulative impacts from later projects. When later projects are begun, the environmental review will only address changes to the anticipated impacts within the entire study area due to changes in facility plan design/engineering changes, or changes in the physical environment that occurred in the interim period.

ELEMENT 7: REPORTING REQUIREMENTS

Idaho will meet the annual reporting requirements for the revolving loan program as outlined in the Capitalization Grant Agreement.

Further, the Department of Environmental Quality realizes EPA Region X will continue the overview responsibility of the environmental review process.

DRAFT

**STATE OF IDAHO
DEPARTMENT OF ENVIRONMENTAL QUALITY
LOAN OFFER, ACCEPTANCE AND CONTRACT
FOR WASTEWATER TREATMENT FACILITY
DESIGN AND CONSTRUCTION**

SECTION I. INTRODUCTION

The State of Idaho (State) is authorized by the Water Pollution Abatement Act (Act), Title 39, Chapter 36 of the Idaho Code, to make loans from the Wastewater Treatment Facility Loan Account (Account) to assist municipalities in the construction of wastewater treatment facilities. The Idaho Board of Environmental Quality, through the Department of Environmental Quality (Department), is authorized to administer the Act. The Department has determined that the _____ has established eligibility for a loan under the terms of the Act and the Rules for Administration of Wastewater Treatment Facility Loans, Title 1, Chapter 12 (Rules).

A completed application for a Wastewater Treatment Facility Design and Construction Loan has been submitted to the Department by the Applicant. The Department hereby offers a loan to the Applicant according to the terms and conditions contained in this document and the Rules.

SECTION II. DESCRIPTION OF PROJECT

This loan offer is for design and construction of the following project:

- A. Loan Project Number:
- B. Project Description:
- C. Terms:

D. Estimated Project Budget

	<u>Loan</u>	<u>Other</u>	<u>Total</u>
1. Administrative	-0-	-0-	-0-
2. Engineering Fees	-0-	-0-	-0-
3. Construction	-0-	-0-	-0-
4. Land Acquisition	-0-	-0-	-0-
5. Total	\$-0-	\$-0-	\$-0-

SECTION III. GENERAL CONDITIONS

This offer may only be accepted by signature by an authorized representative of the Applicant. Upon acceptance by the Applicant, this offer shall become a loan contract and the Applicant shall become a Borrower. The effective date of this loan contract shall be the date of acceptance by the Borrower after this loan contract has been duly authorized by ordinance of the Borrower. By accepting this offer, the Borrower agrees to all terms and conditions set forth in this document and the Rules:

The Borrower agrees:

- A. To not transfer, assign or pledge any beneficial interest in this contract to any other person or entity without the prior written consent of the Director of the Department of Environmental Quality (Director). To not enter into sale, lease or transfer of any of the property related to the project. To not make any additional material encumbrances to the project without the prior written consent of the Director. To not incur any liabilities that would materially affect the funds pledged to repay this loan without the prior written consent of the Director. To not delegate legal responsibility for complying with the terms, conditions, and obligations of this contract without the prior written consent of the Director. Notwithstanding any other provision of this paragraph, the Borrower may sell or otherwise dispose of any of the works, plant, properties and facilities of the project or any real or personal property comprising a part of the same which shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the project, or no longer necessary, material or useful in such operation, without the prior written consent of the Director.
- B. To enter into such contractual arrangements with third parties as it deems advisable to assist it in meeting its responsibilities under this contract.

- C. To fulfill all declarations, assurances, representations and statements in the application and all other documents, amendments and communications filed with the Department by the Applicant in support of the request for this loan.
- D. To comply with applicable State and Federal employment requirements including, but not limited to, Equal Employment Opportunity and Civil Rights requirements.
- E. To make efforts to award subagreements to Minority and Women-owned businesses (MBE/WBE). The fair share goals, 1% and 1% respectively, will be in bid solicitations and documentation of efforts to obtain MBE/WBE participation will be required of any contractor who fails to attain the goals. Quarterly reports of MBE/WBE utilization will be prepared on forms supplied by the Department.
- F. To provide evidence of ownership in the form of fee simple title or long-term lease and right of access or easements for real property on which the project is to be constructed. Clear title to all real property necessary for the successful operation of the facilities shall be guaranteed by the Borrower for the useful life of the project.
- G. To take affirmative action to ensure that the project shall be completed and operated in conformance with federal and state laws relating to occupational health and safety.
- H. That if prior to completion of this contract the project is damaged or destroyed, there will be no reduction in the amounts payable by the Borrower to the Department.
- I. That in the event there is any default in the payment of either the principal amount or the interest due under this contract, or any breach by the Borrower of any of the terms or conditions of this contract, the entire principal amount and whatever interest is due to the date of payment may be declared due and immediately payable. The amount of such default shall bear the same interest rate as applies to the principal of this loan from the date of default until the date of payment by the Borrower. All costs incurred by the Department due to such default, including court costs and attorney's fees, shall be repaid by the Borrower to the Department.
- J. That any waiver by the Department at any time of the rights or duties under this contract shall not be deemed a waiver of any subsequent or additional rights or duties under this contract.
- K. That the use by the Department of any remedy specified in this contract for its enforcement is not exclusive and shall not deprive the Department of the right to seek any other appropriate legal or equitable remedy.
- L. That this agreement is binding upon the Borrower and the Department, and

any person, office or entity succeeding the Borrower or the Department.

- M. To comply with all applicable federal, state and local laws.

SECTION IV. PROJECT MANAGEMENT

The Borrower agrees to:

- A. Require the prime engineering firm(s) and their principals retained for engineering services to carry professional liability indemnification to protect the public from the engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's professional liability indemnification shall be one hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability indemnification must cover all services rendered for all phases of the project, whether or not those services are state funded, until the certification of project performance is accepted by the Department.
- B. Comply with the Public Contracts Bond Act, Title 54, Chapter 19, Idaho Code, including requiring the prime construction contractor retained for construction to carry performance and payment bonds equal to one hundred percent (100%) of the contract price. The bond will be released when the constructed facility is accepted by the Borrower.
- C. Assure that contracts related to the project which provide for arbitration allow appeal of any resulting arbitration decision to a district court or allow the arbitration to be non-binding on both parties if either party desires not to use arbitration as a method of dispute settlement.
- D. Jointly with an engineering consultant provide assurances that the physical and operational integrity of the works, when constructed, will achieve the level of treatment provided for in the design specifications.
- E. Provide for the accumulation of funds through charges made for services, through revenue bonds, or otherwise, for the purposes of (1) establishing a fund dedicated solely to the repayment of principal and interest on this loan, (2) capital replacement and (3) future improvement, betterment, and extension of such works occasioned by increased wastewater loading on the works.
- F. Provide a plan and program for an equitable user charge system for payment of operation and maintenance of constructed facilities. Make available on an equitable basis the services of the project to the residents and commercial and industrial establishments of the area it was designed to serve. The user charge system shall be approved by the Department and enacted by the Borrower prior to receiving final payment.

- G. Review and update the user charge system at least biennially during the life of this agreement to assure that all costs including debt retirement, operation and maintenance are offset by sufficient revenues.
- H. Develop and adopt a sewer use ordinance approved by the Department prior to receiving final payment of State loan funds.
- I. Provide an operation and maintenance manual for the project approved by the Department prior to receiving final payment of State loan funds.
- J. Provide adequate staffing and qualified operation and maintenance personnel as specified in the operation and maintenance manual approved by the Department.
- K. Assure that the operator in charge of the treatment facility has a level of competency commensurate with the nature of the collection and treatment facility. He(She) must be a graduate of an approved wastewater operators training program or be certified as a Wastewater Treatment Works Operator in a class equal to or greater than that of the facility.
- L. Assure that treatment facility personnel shall participate in operator training programs approved by the Department and designed to assure competence in the operation and maintenance of the facility.
- M. Commence satisfactory operation and maintenance of the sewage treatment facility on completion of the project in accordance with applicable provisions, rules of the Department and any other applicable law, rule or regulation and not discontinue operation or dispose of the treatment facility without the written approval of the Department.
- N. Provide for continuing acceptance and treatment of local septage waste, if such facilities were constructed under this loan contract.
- O. Maintain project accounts in accordance with government accounting principles issued by the Government Accounting Standards Board (GASB).
- P. Certify whether or not the project is performing in accordance with the design performance standards after the project has been in operation for one year. If the project cannot meet these standards, the Borrower must submit a corrective action report and a schedule for bringing the project into compliance.

SECTION V. SPECIAL CONDITIONS

- A. The Borrower shall complete the project in accordance with the following

schedule:

Number of months from Loan Acceptance	Task
_____	10% Design Review
_____	50% Design Review
_____	90% Design Review
_____	Final Plans, Specifications and Bid Documents
_____	Bid Summary
_____	Award Construction Contract
_____	Project Management Conference.
_____	Plan of Operation Amendment
_____	Draft Operation & Maintenance Manual
_____	Staffing Plan
_____	Construction Completion
_____	User Charge System Enacted
_____	Sewer Use Ordinance Enacted
_____	Final Operation & Maintenance Manual
_____	Final Inspection
_____	Initiate Operation
_____	Final Payment
_____	Certify Performance (1 yr. from completion)

- B. The above schedule may be changed by amending the plan of operation; all amendments to the plan of operation must be approved by the state project engineer, prior to becoming effective.

SECTION VI. SECURITY REQUIREMENTS

The Borrower agrees:

- A. This loan will be evidenced and secured by revenue bond(s) in the amount of \$_____ (_____ dollars). A copy of the revenue bond ordinance will be attached to this contract and incorporated by reference.
- B. To establish a reserve account that within 5 years will contain an amount equal to 1 year's repayment of principal and interest due on this contract. A minimum of 20 percent of the total reserve will be deposited annually during the 5-year period. In the event Borrower fails to make any repayment due on this contract, Borrower shall immediately use the funds in the reserve account to pay the past due principal and interest on this contract. Borrower will inform the Department in writing when funds from the reserve account are used. Within 30 days of using the funds in the reserve account, Borrower will replenish the reserve account in an amount equal to the amount

borrowed from the reserve account. The reserve account may be used by the Borrower solely for the purpose of securing repayments on this contract.

SECTION VII. LOAN DISBURSEMENTS

The Borrower agrees:

- A. This loan shall be used solely to aid in the financing of the Borrower's project.
- B. Requests for actual disbursement of loan funds will be made by the Borrower using forms provided by the Department. Upon approval of the disbursement request by the Department loans funds shall be released to the Borrower.
- C. A project review by the Department will determine final eligible costs for the project.
- D. If the actual eligible cost of the project is determined by the Department to be lower than the estimated eligible cost, the loan amount will be reduced accordingly.
- E. Payment of the final five percent (5%) of this loan shall be withheld until the following requirements are met:
 - 1. The Borrower's engineer certifies (a) that the project has been constructed according to plans and specifications previously approved by the Department and (b) that the project is fully operational; and
 - 2. The Department has inspected the project and verifies the engineer's certification; and
 - 3. The Department has determined that all terms and conditions of this agreement have been met; and
 - 4. A final loan repayment schedule has been completed; and
 - 5. All security requirements of Section VI have been satisfied.
- F. This offer is subject to the existence of the offered sum of money in the Account at the time of payment. Should the offered sum of money not be available in the Account at the time of payment, the Department hereby agrees to pay the Applicant the offered sum of money on the basis of the Applicant's priority position immediately upon the accrual of said sum in the Account.

SECTION VIII. REPAYMENT TERMS AND SCHEDULE

The Borrower agrees:

- A. This loan shall be repaid in the manner set forth in the revenue bond(s) attached to this contract and incorporated by reference.
- B. To pay biannual payments of principal and interest and to fully amortize this loan not later than twenty (20) years from project completion. Interest will begin accruing with the first disbursement of funds. At the end of construction accrued interest will be either paid to the Department or incorporated into the final loan amount if the approved amount has not been exceeded.
- C. This loan contract shall remain in full force and effect for the actual service life of the project. At a minimum, this loan contract shall remain in full force and effect until all loan proceeds, including principal and interest, have been paid in full or the contract is otherwise suspended or terminated by the Department.

SECTION IX. PROHIBITIONS

The Borrower agrees:

Expansion of collection systems in excess of reserve capacity of the treatment works will be prohibited unless concurrent designated construction provisions for adequate treatment are provided by the Borrower.

SECTION X. SUSPENSION OR TERMINATION OF LOAN CONTRACT

- A. The Director may suspend or terminate this loan contract prior to final disbursement for failure by the Borrower or its agents, including engineering firm(s), contractor(s) or subcontractor(s), to perform. This loan contract may be suspended or terminated for good cause including, but not limited to, the following:
 - 1. Commission by an employee or agent of the Borrower, of any of the following acts which affects the Borrower's obligations under this contract: fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, receipt of stolen property or any crime for which the maximum sentence includes the possibility of one (1) or more years' imprisonment.
 - 2. Violation(s) of any term of this loan contract; or
 - 3. Any willful or serious failure to perform within the scope of the project, plan

of operation and project schedule, terms of engineering subagreements, or contracts for construction; or

4. Utilizing a contractor or subcontractor who has been debarred for good cause by any federal or state agency from working on public work projects funded by that agency.
- B. The Director will notify the Borrower in writing and by certified mail of the intent to suspend or terminate this loan contract. The notice of intent shall state:
1. Specific acts or omissions which form the basis for suspension or termination; and
 2. Availability of a hearing, conducted by the Director, or his designee as hearing officer, said hearing being conducted as provided for in the Rules Governing Contested Cases and Declaratory Rulings, IDAPA 16.05.03 et seq. at a time and in a place specified by the Director.
- C. Upon the proof of the existence of cause(s) for suspension or termination by substantial evidence or by proof of judgement or conviction of offense(s), the Director shall make a written determination, sending the determination to the Borrower by certified mail within seven (7) days of the hearing.
- D. Upon written request by the Borrower with evidence that the cause(s) for suspension no longer exists, the Director may, if funds are available, reinstate the loan contract. If a suspended loan contract is not reinstated, the loan will be amortized and a repayment schedule prepared in accordance with the provisions of this loan contract.
- E. No terminated loan shall be reinstated. Terminated loans will be amortized and a repayment schedule prepared in accordance with the provisions of this loan contract.

SECTION XI. ACCESS AND INDEMNIFICATION

The Borrower agrees to:

- A. Provide the Director, or his authorized agents, and the Environmental Protection Agency, access to all files, records, accountings and books relating to the management and accountability of this loan after reasonable notice.
- B. Indemnify and save harmless the State of Idaho, its agents and its employees from any and all claims, actions, damages, liabilities and expenses directly or indirectly connected to the Borrower or its agents,

employees, contractors, or assignees actions related to the location, design, construction, operation, maintenance, repair, failure or deactivation of the project or any part of the project.

SECTION XII. OFFER

The offer set forth herein must be accepted, if at all, on or before _____. An acceptance must be accompanied by a resolution of the Applicant's governing body authorizing the signator to sign on the Applicant's behalf for the purpose of this agreement.

Dated this _____, 2003.

C. Stephen Allred
Director
Department of Environmental Quality

SECTION XIII. ACCEPTANCE

The _____, by and through its undersigned representative(s), accepts the foregoing offer and agrees to discharge all obligations and to comply with all terms and conditions contained herein.

Signature of Representative

Name and Title of Representative - type or print

Date

DISBURSEMENT PROCESS

Borrowers will be supplied with disbursement request forms by the Department. Loan disbursements will be made as costs are incurred. Requests for disbursement will be processed as quickly as possible by the Department. Requests will be reviewed for eligibility and to assure that costs are adequately documented. Project officers will review each request in accordance with criteria on the Disbursement Review Checklist and sign the request as indicated.

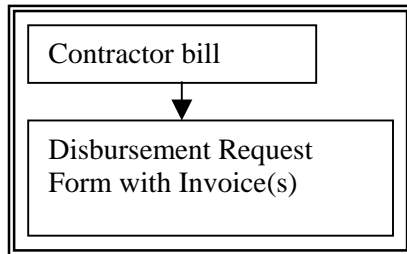
Upon receipt of the Borrower's request and completion of the checklist the Project Officer will transmit both documents to the Senior Financial Specialist in the State Office Fiscal Office, with a copy to the Loan Program Manager in the State Water Office. The documents will be reviewed for content and accuracy by the accounting staff and upon approval a disbursement will be prepared. All disbursement documents will become a permanent part of the project file.

Disbursement of the final 5 percent of loan funds will not be made until a final review is conducted by the Department and the following documents are in the project files maintained by the Department:

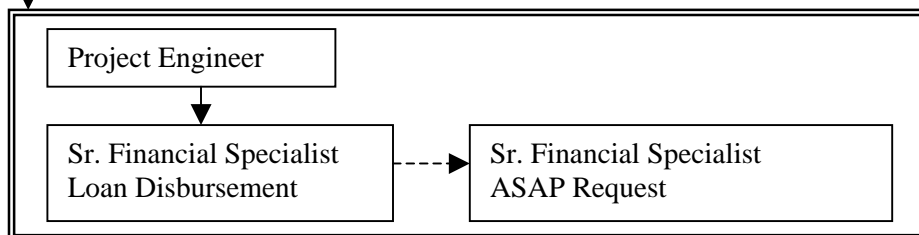
1. Final construction inspection reports.
2. Engineer's certification that construction was completed in accordance with approved plans and specifications.
3. Borrower's acceptance of construction.

DISBURSEMENT PROCESS

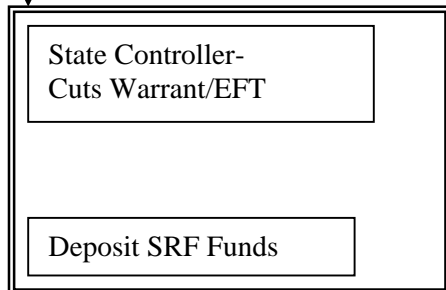
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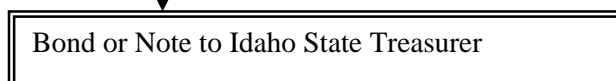
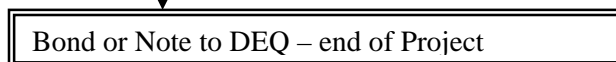
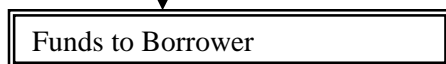
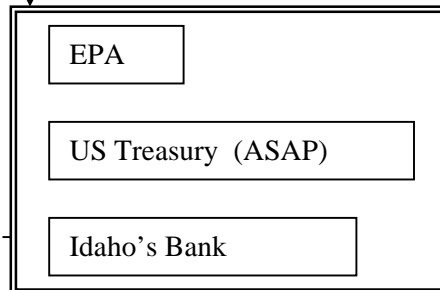
DEQ



STATE ACCOUNTING



FEDERAL SYSTEM



ANNUAL REPORT

Each year by October 1, DEQ will submit an annual report to the EPA Regional Administrator of Region X on the use of loan funds and how the goals and objectives defined in the Intended Use Plan have been met.

Specifically, the report will contain six sections. The first section will be an introduction stating the period the report is prepared for and if the goals were met. The second section will be a general program summary. The third section will be a description of both short-term and long-term goals and accomplishments. The fourth section will be a more detailed description of the fund status, assistance activities, provisions of the Operating Agreement and/or grant conditions such as the state match, binding commitments, first use, eligible activities, compliance with Title II requirements, MBE/WBE requirements, cross-cutters, State Environmental Review Process, cash draw procedures and a comparison of scheduled disbursements to actual disbursements. The fifth section will explain any program changes, both in the Intended Use Plan and in Goals and Objectives. The sixth section will be used to describe any proposed improvements that are contemplated, either in the program or for long or short-term goals for future Intended Use Plans.

February 13, 2004

Mr. John Iani, Regional Administrator
EPA, Region 10 RA-140
1200 Sixth Avenue
Seattle, WA 98101

Dear Mr. Iani:

Attached is an updated Operating Agreement between Idaho DEQ and EPA that addresses how we will run our Clean Water State Revolving Fund program. This new agreement will supercede the existing operating agreement that was signed in 1989.

On behalf of my staff, I would like to extend our thanks to Dan Steinborn, the Region 10 SRF Coordinator for his assistance in the preparation and review of this document.

We would appreciate having a signed copy of this agreement returned as soon as possible. If you have any questions concerning this agreement please contact Bill Jerrel, the SRF Loan Program Manager at (208) 373-0400 or Mr. Steinborn.

Sincerely,

C. Stephen Allred
Director